

BASMAA and Member Agency Comments on Unresolved Issues

General

Before providing comments on specific program elements, some of the general unresolved issues are:

A need exists for the MRP to describe roles and responsibilities of local permitted agencies and Regional Water Board staff in order to improve coordination between Regional Water Board and the local agency staff, optimize the use of public resources, and clarify to regulated businesses and state/federal agencies who is responsible for what. Any shifts in work from the Regional Water Board staff to municipal stormwater programs should be mutually agreed upon and adequate ways to handle and phase in increased levels of responsibility would need to be addressed.

Prioritization is an essential issue that has not yet been addressed in this MRP process. Prioritization of what is important to accomplish with the MRP in this permit round needs to be discussed and resolved so that the MRP emphasizes and focuses on key areas of concern. BASMAA has consistently supported the implementation of TMDLs as a key activity that should be a priority of this permit, but there may be other important priorities that should be identified by Regional Water Board staff and other stakeholders. The MRP needs to recognize priorities early in the process so that they receive appropriate attention. The Regional Water Board list of unresolved issues should be prioritized in some manner so that the most important matters are focused on.

The unresolved issues need to be resolved to correctly address the amount of prescriptiveness in the performance standard and reporting tables so as to avoid wasting municipal stormwater and Regional Water Board staff time. The development of overly prescriptive MRP requirements poses a risk of hindering municipal stormwater agencies from implementing effective and progressive stormwater requirements. The level of detail needed in the reporting should recognize the unintended detrimental consequences that overly burdensome reporting will have on municipal staff who would have to divert time away from implementing effective stormwater pollution prevention and treatment BMPs to spend on reporting. Water Board staff time is also limited and should not be expended reviewing unnecessarily detailed reports when the time could be better spent on substantive issues rather than meaningless “bean counting.” These are not just theoretical concerns; as evidenced last year in one example when Regional Water Board staff was unable to provide one member agency with feedback on its Annual Report because of other time commitments. Staff response to other programs has also been significantly deferred or delayed.

In general, BASMAA has categorized below, by program element, the unresolved issues posted by Regional Water Board staff and others not posted into:

- Issues that we agree should be on the list
- Issues that should not be on the list because they were resolved in the work groups
- Issues that were added by Regional Water Board staff but not discussed in the work groups
- Issues that were left off the list and should be added
- Issues that are vague and unclear, or were stated as directive conclusions

BASMAA and Member Agency Comments on Unresolved Issues

Pollutants of Concern

Note: Unresolved issues were not posted for copper or diazinon/pesticide-related toxicity, and the current version of the draft work group's tables were posted for mercury and PCBs. BASMAA concurs with this approach because the work of these particular work groups is not quite complete and therefore the concept of identifying unresolved issues is somewhat premature. Therefore, our categorization scheme is not yet applicable to the Pollutants of Concern (POCs).

Having said that, we do expect, and the work group recognized, that there will be issues that we need to address and resolve. For example, it is important to identify the appropriate level of implementation of mercury and PCB control tasks. Because BASMAA endorses TMDL implementation as the main priority for the MRP, the Regional Water Board staff's expectations for mercury and PCB-related tasks may turn out to be fairly consistent with the MRP work group's mercury and PCBs tables. However, at this point, staff's list of tasks still significantly exceeds what BASMAA considers appropriate and potentially feasible to implement in this permit round. This needs to be resolved in advance of many other issues in order to determine the extent of resources, if any, that will be available for the other permit priorities and performance standards.

Among other things, we need to resolve what are municipal stormwater programs' appropriate roles and levels of responsibilities for investigating and remediating PCB and mercury release sites that impact stormwater? For example, one member agency found elevated levels of PCBs in a storm drain near a PCB site that Regional Water Board staff was responsible for working with the owner to remediate. Information was forwarded to Regional Water Board staff, but to the best of our knowledge staff has not issued an order or 13267 letter to the property owner to-date and instead have continued to look to municipal resources. This small example illustrates that we need to better define our relationships in the many, many circumstances that exist so that issues are effectively addressed without squandering *either* of our limited resources.

Municipal Maintenance

Issues that we agree should be on the list

With the exception(s) noted below, we agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

Issues that were added by Regional Water Board staff but not discussed in the work groups

(3) *Trash control*

- b) Retrofit or redesign storm drain inlets in high traffic areas and pump stations to effectively reduce trash/litter from stormwater runoff.*
- c) Upgrade existing storm drain inlets to exclude trash through use of appropriate grating and schedule trash removal maintenance.*

BASMAA and Member Agency Comments on Unresolved Issues

(3) Landscape Maintenance

- a) Vegetation Control – mow and avoid the use of herbicides to remove excess vegetation along road sides and storm drain ditches.*

(4) Pump Station

- c) Implement monitoring of flows, DO, conductivity, and other pollutants, and*
- d) Explore diversion to sanitary sewer (dry weather flows and first flush).*

Both are significantly beyond what was discussed in the work group.

Issues that were left off the list and should be added

(1) Street Sweeping

- c) Record keeping, reporting, and training issues. Further, use of outside contract sweepers makes some requirements not practical.
- d) Need exemption category for residential streets that are mostly kept clean by gardeners of private property owners.

(2) Catch Basin Inspection and Cleaning

- b) Labeling of storm drain inlets should not be required for pipes that daylight to the ground surface.

(3) Trash Control

- c) Trash control measures shall be considered where possible. Flooding of roadways and/or private property is a higher concern.

Issues that are vague and unclear, or were stated as directive conclusions

(2) Catch Basin Inspection and Cleaning

- a) Determine annual inspection and cleanup frequency of catch basins to meet stormwater quality.*

The way item 2(a) is stated does not make sense – seems to state “annual” as the frequency.

- (5) Tidal Lagoons: Currently, such water bodies are covered under the State Water Board’s NPDES permit for Aquatic Pesticide to Surface Water Guidelines and Monitoring Requirements. However, the environmental non-profit organizations provided comments on this subject during the introductory presentation of the municipal maintenance workgroup.*

Statement of issue vague and unclear; the two sentences seem to cancel each other.

Conditionally Exempt Non-Stormwater Discharges

Issues that we agree should be on the list

With the exception(s) noted below, we agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

BASMAA and Member Agency Comments on Unresolved Issues

Issues that were added by Regional Water Board staff but not discussed in the work groups

2) *Swimming pool, hot tub, and fountain water discharges. Shall such discharges to storm drain be prohibited? New installations shall be connected to local sanitary sewer systems. What shall be done with existing installations?*

Some flexibility is needed to deal with situations where sanitary sewer lines are not present. This issue was discussed a little at the work group meeting, but it was not on the list of unresolved issues.

Issues that were left off the list and should be added

There are potentially many other issues in this area that are not listed by Regional Water Board staff as unresolved issues (i.e., prevention and notification regarding uncontaminated pumped groundwater, water pump purging, irrigation & watering controls).

Issues that are vague and unclear, or were stated as directive conclusions

New Development

Issues that we agree should be on the list

With the exception(s) noted below, we agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

Issues that were added by Regional Water Board staff but not discussed in the work groups

4.c. *Require construction inspections by local agencies to ensure construction [according] to plans.* This issue was not discussed in the work group.

Issues that were left off the list and should be added

One issue is missing - add #5.e. "Eliminate requirement to demonstrate that on-site treatment is impracticable before granting a project proponent the option of equivalent off-site treatment" (from Regional Water Board staff's final New and Redevelopment Performance Standards Table).

Issues that are vague and unclear, or were stated as directive conclusions

The brief descriptions of the posted issues often fail to adequately capture all the specific options proposed for each issue.

Construction Inspection Program

Issues that we agree should be on the list

We agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

BASMAA and Member Agency Comments on Unresolved Issues

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Issues that were left off the list and should be added

Issues that are vague and unclear, or were stated as directive conclusions

Industrial/Commercial Inspection Program

Issues that we agree should be on the list

We agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

Issues that were added by Regional Water Board staff but not discussed in the work groups

Issues that were left off the list and should be added

Issues that are vague and unclear, or were stated as directive conclusions

IC/ID

Issues that we agree should be on the list

We agree that all of the unresolved issues posted by Regional Water Board staff should be on the list.

Issues that should not be on the list because they were resolved in the work groups

Issues that were added by Regional Water Board staff but not discussed in the work groups

Issues that were left off the list and should be added

Issues that are vague and unclear, or were stated as directive conclusions

PI/P

Note: No unresolved issues were posted so much of our categorization scheme is not (yet) applicable.

Issues that we agree should be on the list

Issues that should not be on the list because they were resolved in the work groups

BASMAA and Member Agency Comments on Unresolved Issues

Issues that were added by Regional Water Board staff but not discussed in the work groups

Issues that were left off the list and should be added

Activities have not been prioritized with respect to TMDLs and other pollutants of concern by the work groups and there just aren't enough resources to do what different Regional Water Board staff have in mind by way of PI/P in general (e.g., requirement for higher storm drain marking coverage, more annual media pitches) and undertake the PI/P-related projects that are needed to address the pressing priority pollutant/water quality issues and provide consistency with TMDL implementation plans.

Issues that are vague and unclear, or were stated as directive conclusions

Monitoring

Issues that we agree should be on the list

The Regional Water Board list generally includes accurate statements of unresolved issues but some are stated vaguely or are inconsistent with the discussion by the work group (see last category below).

Issues that should not be on the list because they were resolved in the work groups

Issues that were added by Regional Water Board staff but not discussed in the work groups

Issues that were left off the list and should be added

The Regional Water Board's list should include additional unresolved issues relating to watersheds or waterbodies in which Status and Trends will be conducted: whether the permit should define or list local watersheds or waterbodies, and whether this list should be comprehensive in geographical scope or focus on main watersheds or a pre-selected list specifically for the permit. Work group also left unresolved whether a rotation should be completed in 5 or 10 years.

BASMAA agrees that higher-order prioritization among the various Monitoring elements is crucial, but Pollutants of Concern should be added to the list of components with significant linkages to Monitoring. Some POC issues raised by Regional Water Board staff are not related to current TMDLs so these should be noted as additional unresolved issues, particularly "emerging pollutants".

Issues that are vague and unclear, or were stated as directive conclusions

The Regional Water Board list generally includes accurate statements of unresolved issues but some are stated vaguely or are inconsistent with the discussion by the work group, especially:

- Regional collaboration: Work group and BASMAA agree on optional development of a regional monitoring plan as a substitute for some/all of Status & Trends. However Regional Water Board version goes beyond the work group and specifies

BASMAA and Member Agency Comments on Unresolved Issues

the composition of the “collective group” that would “develop and implement” the regional plan.

- Status and Trends Monitoring: BASMAA agrees that the sampling sites and geomorphology/streamflow indicators are key issues. The Regional Water Board has made some minor alterations to table from the work group version, but acknowledges that all of these numbers were conceptual, subject to discussion.